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No. 767

In the Supreme Court of the United States

October Term, 1946

HAROLD L. ICKES, SECRETARY OF THE INTERIOR, PETITIONER

v.

UNITED STATES OF AMERICA EX REL. CHESAPEAKE POTOMAC TELEPHONE COMPANY

ON WRIT OF CERTIORARI TO THE COURT OF APPEALS OF THE DISTRICT OF COLUMBIA

BRIEF FOR THE RESPONDENT

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HAROLD L. ICKES, SECRETARY OF THE INTERIOR, petitioner

v.

UNITED STATES OF AMERICA EX REL. CHESTATEE PYRITES & CHEMICAL CORPORATION

ON WRIT OF CERTIORARI TO THE COURT OF APPEALS OF THE DISTRICT OF COLUMBIA

BRIEF FOR THE PETITIONER

OPINIONS BELOW

The opinion of the Supreme Court of the District of Columbia (R. 73–78) has not been reported. The opinion of the Court of Appeals of the District of Columbia (R. 94–98) is reported in 62 F. (2d) 863.

JURISDICTION

The judgment of the Court of Appeals of the District of Columbia was entered December 12, 1932 (R. 98). Petition for certiorari was filed

March 11, 1933, and was granted March 27, 1933 (R. 101). The jurisdiction of this Court is invoked under Section 240 (a) of the Judicial Code, as amended by the Act of February 13, 1925.

QUESTION PRESENTED

Whether the petitioner has complied with the order of the Supreme Court of the District of Columbia (R. 35–36) issued upon the mandate of this Court in *Wilbur* v. *United States ex rel. Chestatee Pyrites & Chemical Corporation*, 284 U.S. 231. Answer to this question turns partly upon whether the action of petitioner's predecessor in disallowing that part of relator's claim under the War Minerals Relief Act which was based upon interest on borrowed money accruing after March 2, 1919, the effective date of that Act, was erroneous as a matter of law.

STATUTES INVOLVED

These are set forth in Appendix A, pp. 28–33, *infra*.

STATEMENT

On March 5, 1919, the relator, the Chestatee Pyrites & Chemical Corporation, filed with the Secretary of the Interior a claim for losses alleged to have been incurred in connection with the production of pyrites under conditions specified in Section 5 of the War Minerals Relief Act, p. 28, *infra* (R. 3, 27, 94). This claim, with respect to which awards totaling $829,850 have from time to time been

paid (R. 29, 48, 53, 77; see pp. 23–24, *infra*), included items of interest on money borrowed and lost by the claimant.[1] In September, 1922 (R. 11), the Secretary ruled that under the statute interest on money borrowed was not reimbursable (R. 5, 13–16, 25, 27, 94–95).

Thereafter, on July 27, 1923, the relator sought a writ of mandamus in the Supreme Court of the District of Columbia to compel the Secretary to allow the interest claimed. On January 9, 1924, that court held that interest on borrowed money was an allowable item and awarded a writ of mandamus. There is nothing in the court's opinion to indicate that it considered the question of claimant's right to recover interest paid or accruing after March 2, 1919. Upon appeal the judgment was affirmed by the Court of Appeals of the District (*Work* v. *United States,* 298 Fed. 839). Although that court said that "the interest paid or obligated to be paid" should be allowed, it apparently did not consider whether the statute contemplated the allowance of interest paid or accrued after March 2, 1919. In its opinion the court said (p. 841)—

> This narrows the case to the single question of law, whether the item of interest is embraced within the claim for net losses incurred by relator.

[1] This claim is not in the record but apparently it was broad enough in terms, *as subsequently amended*, to include interest paid or accruing after March 2, 1919, the date of the Relief Act (R. 3, 27, 39, 58–59).

Thereafter the decision of the Court of Appeals was reversed by this Court (*Work* v. *Chestatee Co.*, 267 U.S. 185) upon the ground that under the statute the courts were without jurisdiction to review the Secretary's decision. The briefs of the parties before this Court discussed only the general question whether interest on borrowed money was an allowable item.

On February 13, 1929, Congress amended the War Minerals Relief Act so as to provide that the final decisions of the Secretary of the Interior on questions of law arising under the statute might be reviewed by the Supreme Court of the District of Columbia (p. 32, *infra*). The relator thereupon brought an action in that court for a writ of mandamus to compel the Secretary to take jurisdiction of and allow its claim for interest on borrowed money (R. 2–7). The relator's petition alleged that its claim consisted of "interest paid on borrowed money and obligations incurred to pay interest thereon" (R. 6). On March 7, 1930, that court denied mandamus, holding that interest was not an allowable item.

Appeal was taken to the Court of Appeals of the District on assignments of errors which did not specifically distinguish between interest accruing before and interest accruing after March 2, 1919, but which did refer to a claim for interest which "appellant obligated itself to pay for the use of borrowed money." (See record in No. 67, October

Term, 1931, p. 28.) On February 2, 1931, the Court of Appeals reversed the judgment of the Supreme Court of the District, holding that interest was an allowable item (47 F. (2d) 424). The opinion of the Court of Appeals does not specifically deal with the question whether the allowance of interest should be limited to that paid or accrued prior to the passage of the statute, but the court did say that "interest paid or obligated to be paid in this case should be allowed." Upon certiorari, this Court affirmed the judgment of the Court of Appeals (284 U.S. 231) and remanded the case to the Supreme Court of the District of Columbia—

> with directions to award a writ of mandamus requiring the Secretary of the Interior to proceed to an examination and adjustment of the claim in question conformably to the statutes as construed in the opinion of this Court.[2]

Nothing in the briefs of either party filed in this Court specifically raised or called to the attention of this Court the question whether interest paid and accruing after March 2, 1919, was allowable. The Court said in its opinion (p. 238):

> The amount of interest that at the time of the passage of the Relief Act March 2, 1919, had been paid or incurred by relator for money borrowed and lost in producing

[2] The mandate of this Court does not appear in the record in the instant case, but the matter above quoted constitutes the "directing" portion thereof.

> and preparing to produce pyrites upon the specified conditions is to be taken into account in determining the amount of its net loss as of that date.

On December 15, 1931, the Supreme Court of the District of Columbia entered an order upon the mandate of this Court, that (R. 35–36)—

> a writ of mandamus do issue out of and under the seal of this court, directed to Ray Lyman Wilbur, as Secretary of the Interior, commanding him forthwith to proceed to ascertain the amount of interest that, at the time of the passage of the act of Congress of March 2, 1919, Chapter 94, had been paid or the obligation incurred by the relator for money borrowed and lost in producing and preparing to produce pyrites * * *.

Waiving the formal issuance of a writ of mandamus[3] (R. 86), the Secretary proceeded to carry out the order of the court, and, after reviewing relator's claim, made an award of $44,451.45,[4] this amount representing (R. 48)—

> the amount of interest that at the time of the passage of the act of Congress of March 2, 1919, had been paid or the obligations incurred by the relator for money borrowed and lost in producing and preparing to

[3] No formal writ of mandamus was issued. The statement in the opinion of the Court of Appeals (R. 95) to the contrary was apparently an inadvertence.

[4] This award does not appear in the record, but for the information of the Court it has been set forth herein as Appendix B, pp 33–38, *infra*.

> produce pyrites * * *, and for which in justice and equity the relator was entitled to receive reimbursement * * *.

The relator thereupon filed in the Supreme Court of the District a document entitled "Petition to Enforce Decree"[5] (R. 36–43) which alleged that the Secretary had disregarded the law and the mandate of this Court in that he had refused to allow relator its net losses growing out of—

> obligations incurred to pay interest beyond March 2, 1919, * * * although such obligations were incurred prior to November 12, 1918, and were existing on and prior to March 2, 1919, and were and *are continuing to run thereafter*. (Italics ours.)

The petition alleged that the amount of interest owing to relator as of December 31, 1931, after allowing for the award of $44,451.45, was $524,276.43, and prayed that the Secretary be directed to award interest paid and obligated to be paid for money borrowed by relator "according to the terms and tenor of the obligations to the date that payment therefor is made."

Thereupon, the court apparently issued a rule upon the Secretary to show cause why he had not complied with the order of December 31, 1931[6] (R.

[5] The petitioner contended in the Court of Appeals that there was no statutory or common law authority which authorized the filing of an ancillary petition of such a nature in a mandamus proceeding. This point was not urged in the petition for a writ of certiorari. (See R. 86.)

[6] This rule does not appear in the record.

73). The Secretary filed a response to the rule (R. 45–52, 96) in which he averred that he had complied with the decree by allowing to relator all interest paid or accrued prior to March 2, 1919, which was all the interest to which in justice and equity it was entitled. The relator filed a traverse to the Secretary's response (R. 65–73), whereupon testimony was taken in open court upon the pleadings (R. 73, 82). On June 7, 1932, the court filed a memorandum opinion holding that the Secretary had fully complied with the order of December 15, 1931 (R. 73–78), and thereafter entered an order that relator's petition be denied (R. 78–79). Upon appeal to the Court of Appeals the judgment was reversed, the court holding that the War Minerals Relief Act did not limit the recovery of interest to that paid or accrued prior to the effective date of the statute (R. 94–98).

SPECIFICATION OF ERRORS

The Court of Appeals erred—

(1) In holding that the mandate and decision of this Court do not limit the recovery of interest on borrowed money to interest paid or accrued prior to the effective date of the War Minerals Relief Act;

(2) In holding that the relator is entitled to recover the amount of any net loss incurred by it by reason of interest paid or accrued after March 2, 1919, on money borrowed by it;

(3) In holding that the decision of the Secretary of the Interior that the allowance of interest on borrowed money must stop as of the effective date of the War Minerals Relief Act was erroneous;

(4) In holding that this Court has construed the Act of March 2, 1919, as amended, to require petitioner to consider relator's claim for interest accruing after its passage;

(5) In holding that petitioner has not complied with the order of the Supreme Court of the District of Columbia of December 15, 1931, entered upon the mandate of this Court in 284 U.S. 231.

(6) In reversing the judgment of the Supreme Court of the District of Columbia.

SUMMARY OF ARGUMENT

I

The order of the Supreme Court of the District of Columbia issued upon the mandate of this Court required the Secretary to ascertain the amount of interest which on March 2, 1919, "had been paid or the obligation incurred by the relator." This order must be interpreted in the light of the opinion of this Court in which the Court said, in effect, that no loss on account of interest was allowable under the statute unless the Secretary was satisfied, and had determined as a matter of fact, that the loss was one for which relator in justice and equity is entitled to reimbursement. The Secretary has awarded relator all interest paid or ac-

accrued prior to March 2, 1919, and has found, as a matter of fact, that relator is not entitled in justice and equity to any further allowance for interest. The Secretary's action constitutes full compliance with the order of the Supreme Court of the District and the mandate of this Court.

II

The War Minerals Relief Act does not authorize the allowance of interest paid or accruing after March 2, 1919, the effective date of that Act. Section 5 of the statute authorizes the Secretary to pay "such net losses as have been suffered" by any person under the conditions specified. The statute thus limits the recoverable losses to those which were sustained at or prior to its effective date. A loss arising out of an obligation to pay interest is not sustained or suffered until the interest is paid, or, at the earliest, until the obligation to pay it accrues. Accordingly, losses from interest paid or accruing after March 2, 1919, are not losses which "have been suffered" on or prior to that date. This conclusion is affirmed by the opinion of this Court, by the general scope and purpose of the statute, and by its legislative history.

III

If any interest paid or accruing after March 2, 1919, is allowable under the statute, it is only interest paid or accruing up to the time of the

payment to relator of sums sufficient to discharge its allowable interest-bearing indebtedness. The relator is entitled to interest on borrowed capital only where such capital was lost under the conditions specified in the statute. The fact that relator did not apply the payments which it received from the Secretary to reduce its interest-bearing indebtedness cannot operate to increase or extend the Government's obligation to pay interest under the statute.

I

THE SECRETARY HAS COMPLIED WITH THE ORDER OF THE SUPREME COURT OF THE DISTRICT OF COLUMBIA ISSUED PURSUANT TO THE MANDATE OF THIS COURT

On December 15, 1931, the Supreme Court of the District entered an order (R. 35–36) that a writ of mandamus issue commanding the Secretary—

> forthwith to proceed to ascertain the amount of interest that, at the time of the passage of the act of Congress of March 2, 1919, * * * had been paid or the obligation incurred by the relator for money borrowed and lost * * *.

This order accurately reflected the mandate of this Court pursuant to which it was issued (284 U.S. 231, 238). In its opinion this Court said that the amount of interest that at the time of the passage of the Relief Act had been paid or incurred by relator for money borrowed and lost under the conditions specified was to be taken into account in

determining its net loss "as of that date." This Court further said (p. 238):

> But the mere fact that such interest was lost does not entitled relator to have, or warrant the Secretary in allowing, any part of it. * * * And the Secretary, upon a consideration of all the circumstances and with due regard to the provisions of the section as amended, must be satisfied, and determine as a matter of fact, *that an allowance on account of such interest is just and equitable* and that the loss is one for which relator *in justice and equity is entitled* to be reimbursed * * *. (Italics ours.)

From the Secretary's response to the rule to show cause (R. 47-52) it appears that, pursuant to the order of the Supreme Court of the District, the Secretary carefully reviewed relator's claim, and awarded relator $44,451.45, this amount representing all interest on money borrowed and lost by relator under the conditions specified, which had been paid or accrued up to March 2, 1919. In his response the Secretary further alleged (R. 51)—

> that in compliance with the requirement aforesaid, he has determined, *as a matter of fact, that it would not be just and equitable to award the relator any interest computed beyond March 2, 1919,* as a loss sustained under the terms of the War Minerals act.
>
> * * * that he reached this conclusion by reason of the fact that the awards of $693,313.79 heretofore paid to the respondent

made it possible for the respondent to discharge its interest-bearing obligations in full and in that way to stop the running of interest, and also because of the reasons stated below.

* * * that *in determining what interest in justice and equity should be paid* to War Minerals claimants, it was necessary for him to fix a limit of time beyond which the payment of interest would, in his judgment, cease to be just and equitable.

* * * that *justice and equity* required that the limit so fixed should be definite, and *applicable to all War Minerals claimants alike.* (Italics ours.)

The allegations in the Secretary's response, which are not contradicted in the record,[7] establish clearly that, in the Secretary's opinion, the allowance to

[7] We interpret the testimony of the Assistant Secretary (R. 82–84) as meaning only that the Secretary doubted his authority, as a matter of law, to make an allowance of interest after March 2, 1919. Moreover, Mr. Edward's testimony shows that the matter went from him to the Secretary, and there is nothing in the record which indicates that the Secretary did not dispose of the matter upon the basis set forth in his response.

Attention is called to the fact that the Secretary's second award to relator of $469,784.62, under date of September 28, 1922 (R. 24–25), while denying interest on borrowed money (R. 13–15), included $64,500 as a *financing charge* (R. 16–20) of 10 percent on the relator's principal indebtedness. Although this fact was not referred to in the Secretary's response in the instant case (R. 47–52), it was undoubtedly one of the reasons why the Secretary ruled that *in justice and equity* the relator was not entitled to interest paid or accruing after March 2, 1919.

relator of interest beyond March 2, 1919, would not, as a matter of fact, be just and equitable. The denial of relator's claim for further interest was thus placed by the Secretary not only on the ground that such interest was not allowable under the decision of this Court but also upon the ground that the loss in question was not "one for which relator in justice and equity is entitled to be reimbursed." (284 U.S. 231, 238.)

Unless the provision in the statute (p. 28, *infra*) that the Secretary shall make only such payments as he shall deem to be "just and equitable", a provision which this Court carefully recognized in its opinion, is to be completely disregarded, we think the conclusion inescapable that the Secretary has fully complied with the order of the Supreme Court of the District of Columbia and the mandate of this Court. Cf. *West* v. *Hitchcock,* 205 U.S. 80, 85–86.

II

THE WAR MINERALS RELIEF ACT DOES NOT AUTHORIZE THE ALLOWANCE OF INTEREST PAID OR ACCRUING AFTER MARCH 2, 1919, THE EFFECTIVE DATE OF THAT ACT

Section 5 of the War Minerals Relief Act, p. 28, *infra,* authorizes the Secretary of the Interior—

> to adjust, liquidate, and pay such net *losses as have been suffered* by any person, firm, or corporation * * * (Italics ours)—

in producing or preparing to produce certain minerals under specified conditions. That section further provides that—

> no claim shall be allowed * * * unless * * * the expenditures so made or obligations so incurred by the claimant *were made* in good faith * * *. (Italics ours.)

This language clearly indicates that the recoverable "losses" are limited to those sustained at or prior to the effective date of the statute. While it is now clear that interest paid or accrued prior to March 2, 1919, on money borrowed and lost under the conditions specified is recoverable (284 U.S. 231), there is no intimation in the statute of an intention that the Secretary should continue to allow and pay interest in the future to whatever date the claimant may have seen fit to fix or extend its liability. A claimant may have chosen to obligate himself to pay interest for twenty or thirty, or more, years in the future; nothing appears in the statute indicating an intent on the part of Congress to assume obligations of such continuing and future character.

In its opinion in this case, required to be followed by its mandate, this Court said (284 U.S. 231, 238):

> The amount of interest that *at the time of the passage of the Relief Act March 2, 1919, had been paid or incurred* by relator for money borrowed and lost in producing and preparing to produce pyrites upon the specified conditions is to be taken into account in determining the amount of its net loss *as of that date.* (Italics ours.)

While, as brought out in the statement of facts (p. 5, *supra*), the question whether interest paid

or accrued after March 2, 1919, is recoverable under the statute was not argued in the briefs or orally in this Court, such question was present in the case, and the language above quoted seems to indicate that in the opinion of this Court such interest is not recoverable. The word "incurred" in the language quoted was clearly used, we think, in its sense of meaning "accrued", since otherwise purely grammatical considerations would require the word "incurred" to be construed as "the obligation to pay which had been incurred." To so construe the word would, in our opinion, render the decision of this Court inconsistent with the statute, and would require the amount of relator's loss "as of that date", March 2, 1919, to be determined in the light of events then unforseeable and occurring long after that date. This we do not think Congress intended.

This view finds confirmation in the decision of this Court in *Wilbur* v. *United States ex rel. Vindicator Consolidated Gold Mining Co.*, 284 U.S. 231. There the Court held that under Section 5 of the Relief Act, as amended, the Secretary was empowered to take into account losses arising out of expenditures for the purchase of land to which the claimant retained title after the enactment of the statute. In this connection the Court said (p. 237):

> The Secretary is required to proceed to ascertain whether relator, on March 2, 1919,

> had incurred net loss by reason of the expenditure of $16,259 for such land; * * *

The clear inference from this holding is that losses occurring after March 2, 1919, through further depreciation or shrinkage in the value of land acquired during the period of stimulation, the ownership of which was retained after March 2, 1929, are not recoverable. As pointed out in an opinion of former Attorney General Mitchell rendered in connection with the question presented in the instant case (R. 63), there is no distinction—

> in principle between losses suffered after March 2, 1919, through further shrinkage of land values and losses suffered after March 2, 1919, through continued accrual of interest on obligations previously incurred and which the claimant had not been able or did not see fit to pay off.

If, as held by this Court, interest paid or accrued *prior* to March 2, 1919, on money borrowed and lost by relator constitutes a "loss", it may be truly said that interest paid or accrued at any time is a "loss," but we contend that such losses are not recoverable unless "suffered" before the passage of the Act. A loss arising out of an obligation to pay interest is not sustained or "suffered" until the interest is paid, or until, at the earliest, the obligation to pay it becomes due. Until the interest is paid or the obligation to pay it has accrued there is no loss, since there is always the chance that the creditor

may forgive the claim or the debtor in some other fashion may escape the payment thereof. Cf. *Burnet* v. *Huff*, No. 58, present term, decided February 6, 1933; *Lucas* v. *American Code Co.*, 280 U.S. 445, 449; *Weiss* v. *Wiener*, 279 U.S. 333, 335. Accordingly, losses arising out of interest paid or accruing after March 2, 1919, are not losses which "have been suffered" on or prior to that date. It is to such losses only that the statute in express terms limits recovery.

The conclusions above asserted are consistent with the general scope and purpose of the War Minerals Relief Act. As its title indicates, the statute was one for "relief." The sudden termination of the war and the consequent disappearance of the ore market left most war-mineral ventures in financial difficulties, and the Act was passed to relieve such difficulties. (See *Work* v. *Rives*, 267 U.S. 175; see also R. 13–14.) But claimants under the statute did not undertake their mining operations wholly from patriotic motives. Even when "stimulated" by Government officials, they did not proceed entirely without hope of profit, and under conditions existing at the time they were warranted in anticipating profits. Accordingly, Congress did not by the Relief Act undertake to compensate claimants fully and make them whole. As pointed out by this Court, Congress "dealt with the subject with the utmost caution", and the statute was not predicated upon the recognition of an indebtedness, but was a mere "gratuity based on equitable and

moral considerations." *Work* v. *Rives,* 267 U.S. 175, 181, 182. These circumstances call not so much for a liberal construction of the statute as they do for its strict limitation to those who can demonstrate that they fall both within its letter and spirit.

Some light as to the extent to which Congress intended interest payments to run is found in the legislative history of the Act of February 13, 1929, p. 32, *infra,* under which the present action was originally instituted. That Act was passed chiefly to permit the *courts* to determine whether Section 5 of the Relief Act authorized the Secretary to make allowances for "money expended in the purchase of property or for interest on borrowed capital." Both in the House Committee Report and on the floor of Congress it was emphasized that if the statute did permit such allowances there would be an expenditure involved "of not more than $3,000,000'. (House Rept. No. 2250, 70th Cong., 2d Sess., p. 2; Cong. Rec., Vol. 70, pp. 2799–2800.) Keeping in mind that the claims for money expended for property far exceeded in amount the claims for interest on borrowed capital and that the former claims alone were expected to approximate $3,000,000 (see footnote 2, p. 10, in the petition for certiorari in No. 67, October Term, 1931; see also Sen. Rep. No. 292, 68th Cong., 1st sess., p. 2), the fact that the estimated expenditure was so completely inadequate to meet the claims for interest *if interest was payable after March 2, 1919* (the

claim of relator alone exceeds $500,000 as of December 31, 1931 (R. 41)), is some evidence that Congress did not think, in 1929, at least, that interest was payable *after that date.*

United States v. *New York,* 160 U.S. 598, cited by this Court when this case was previously before it (284 U.S. 231, 238), is not inconsistent with the petitioner's contentions. That case involved a suit in the Court of Claims against the United States by the State of New York under the Act of July 27, 1861, c. 21, 12 Stat. 276, which directed the repayment of the "costs, charges, and expenses properly incurred" by a State in supplying and equipping troops for the suppression of the rebellion. A subsequent Act, approved March 8, 1862, 12 Stat. 615, declared that the previous Act should be construed "to apply to expenses *incurred as well after as before* the date of the approval thereof." (Italics ours.) This Court held in the case cited that money *paid* by the State as interest upon its bonds which had been issued to raise money for the purposes specified constituted a part of the "costs, charges, and expenses" properly incurred by it for those objects. There, unlike the situation in the instant case, the Court was dealing with a statute couched in broad, inclusive terms, the express purpose of which was to indemnify and reimburse the State, and which in specific terms was applicable to expenses incurred *after its effective date.* (See *Work* v. *Chestatee Co.,* 267 U.S. 185, 187.)

III

IF ANY INTEREST PAID OR ACCRUING AFTER MARCH 2, 1919, IS ALLOWABLE UNDER THE STATUTE, IT IS ONLY INTEREST PAID OR ACCRUING UP TO THE TIME OF THE PAYMENT TO RELATOR OF SUMS SUFFICIENT TO DISCHARGE ITS *ALLOWABLE* INTEREST-BEARING INDEBTEDNESS.

Assuming for argument that that statute does not inhibit the allowance of interest paid or accruing after March 2, 1919, we contend that the relator's claim as to the amount of such interest owing to it is based upon erroneous principles.

In its "Petition to Enforce Decree" (R. 36–43) the relator sets forth the principal amounts of its indebtedness and asserts (R. 41) that there is due it as of December 31, 1931, on account of interest, $524,276.43, and that "interest on the principal sums is continuing and *will continue until paid.*" By such petition the relator seeks to compel the Secretary to pay it the interest which it (R. 43)—

> is obligated to pay for money borrowed, to calculate such interest on such obligations incurred prior to November 12, 1918, according to the terms and tenor of obligations to the date that payment therefor is made * * *.

Apparently relator's contention is that it is entitled to interest on all its present and outstanding interest-bearing obligations (incurred between the

dates and for the purposes specified in the statute) until, if ever, such obligations are paid by it.[8]

This contention is wholly unfounded, even if the statute permits the allowance of interest after March 2, 1919. In plain and unambiguous language this Court made it clear that interest was payable only on (284 U.S. 231, 238)—

> money borrowed and lost in producing and preparing to produce pyrites upon the specified conditions * * *

In other words, relator is entitled to interest on borrowed capital only when such capital was used in the specified manner, which means that the relator is entitled to interest only on such principal

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[8] The Supreme Court of the District took this view of relator's contention. In its opinion it said (R. 76, 77):

"It appears from the facts hereafter discussed that in all probability plaintiff never will be able to pay its entire interest-bearing debt. Its contention in effect is that it is entitled to a permanent annual payment on its unpaid debt.

* * * * *

"It is reasonably apparent from the record that the relator is insolvent, and that it can never hope to pay this $250,000. * * *

"Relator's contention is that it is entitled to collect interest from the United States until it has repaid in full its interest-bearing obligations incurred prior to the cut-off date.

"It is therefore apparent that in addition to its present claim * * * it also asserts the right to collect on its unpaid balance of $250,000 the sum of $20,000 each year in perpetuity."

In its response to the petition for certiorari the relator did not deny that its contention is as above suggested. Neither the "Petition to Enforce Decree" nor the petition for certiorari contains any suggestions as to when, if ever, or how relator will pay its alleged outstanding indebtedness.

amounts, representing borrowed and lost capital, as relator is entitled to under the statute.

Relator's computation of the amount of interest owing to it as of December 31, 1931, appears at R. 41, 70–73. The Court of Appeals did not consider whether this computation was correct, its decision merely being to the effect that the Relief Act did not limit the recovery of interest to that paid or accrued prior to the effective date of the statute (R. 94–98). Apparently no accurate computation of interest beyond March 2, 1919, has been made by the Secretary (R. 84), but it clearly appears on the face of relator's computation and from the Secretary's response to the rule to show cause (R. 49, 51) that the relator's computation is based upon erroneous principles.

The first award to relator was for $223,529.17, and was made on October 25, 1919 (R. 72). On October 5, 1922, a second award of $469,784.62 was made (R. 11–25, 72, 77). On March 14, 1932, an award of $44,451.45 was made (R. 41, 42, 48), this item representing interest on borrowed capital up to March 2, 1919.[9] On December 7, 1932, a further award was made of $1,584.76, for taxes,[10] and on February 23, 1933, a final award of $90,500 was made, this last award being made pursuant to the

[9] This, of course, is the award which was made pursuant to the decision of this Court in 284 U.S. 231, and the award of which relator complains in the present proceeding. (See Appendix B, pp. 33–38, *infra*.)

[10] There is no reference to this small award in the record.

decision of this Court in *Wilbur* v. *United States ex rel. Chestatee Pyrites & Chemical Corporation,* No. 335, October Term, 1932, decided January 16, 1933. (See Appendix C, pp. 38–40, *infra.*) Relator has thus been paid a total of $785,398.55 as principal and $44,451.45 as interest. The relator concedes that it has now been paid *in full* for all principal sums to which it is entitled under the Relief Act, and interest in full up to March 2, 1919. (See Appendix C, pp. 39, 40, *infra.*)

The record does not disclose the amount of the principal sum upon which relator is entitled to interest, i.e., the "money borrowed and lost in producing and preparing to produce pyrites." (284 U.S. 231, 238.)[11] In Exhibit A, attached to the relator's traverse to the Secretary's response to the rule to show cause (R. 65–70), it is asserted (R. 71) that relator's "Total Contract Interest Bearing Liabilities" as of October 25, 1919, the date of the first award, was $860,087.96.[12] It may be true that

[11] Apparently the Secretary must have made a calculation of this figure in connection with the award of interest ($44,451.45) up to March 2, 1919, but the amount thereof does not appear in the record. (See pp. 36–37, *infra.*) The Secretary's response to the rule to show cause contains a statement that (R. 51):

"the awards of $693,313.79 heretofore paid to the respondent, made it possible for the respondent to discharge its interest-bearing obligations in full and in that way to stop the running of interest, * * *."

[12] To this sum approximately $90,000 of miscellaneous items is added in order to reach relator's alleged "Total Indebtedness as at date of First Award," of $948,041.01. (R. 71–72.)

this amount does represent relator's "Total Contract Interest Bearing Liabilities" as of the date mentioned, although there is nothing in the record to support relator's statement, but under the decision of this Court relator is only entitled to interest on its borrowed capital if such capital was "borrowed and lost" in the manner specified. What part of the said sum of $860,087.96 was borrowed and lost under the conditions specified does not appear. That the true amount of the borrowed and lost capital is greatly less than the amount upon which relator claims interest is obvious from the fact that the *entire* amount of *principal* which relator has been allowed (which must be taken to represent the entire amount to which relator was entitled under the statute) is only $785,398.55 (p. 24, *supra*) and this latter sum includes, of course, many items which did not originate from borrowed capital.

We take it as evident without argument that the relator was under a duty to reduce its interest-bearing indebtedness by the application thereto of the awards made to it by the Secretary from time to time.[13] Accordingly, even assuming that the

[13] Instead of applying the payments made by the Secretary to its interest-bearing indebtedness, relator seems to have applied these sums in whole or in part to various legal fees and expenses, expenses of expert witnesses and travel expenses, salaries, brokerage fees, etc. (R. 72–73; see also pp. 36–37, *infra*.) There is clearly no basis in law or equity for such an application of the payments.

The Secretary in his response to the rule to show cause alleged (R. 49):

"that he also ascertained as a matter of fact that instead

entire $785,398.55 of principal paid to it represented capital "borrowed and lost", relator would only be entitled to interest on that amount to October 25, 1919, the date of the first award; to interest on $561,869.38 to October 5, 1922, the date of the second award; to interest on $92,084.76 to December 7, 1932, the date of the third award; and so forth. Assuming *arguendo* that the Government is liable for interest after March 2, 1919, it is obvious that the Government's liability for interest *necessarily* terminated upon the final payment to relator of its principal claim; and according to the response of the Secretary (R. 51) it must have terminated not later than October 5, 1922, the date of the second award, since the first and second awards "made it possible for the respondent [relator] to discharge its interest-bearing obligations in full". (See footnote 11, p. 24, *supra.*)

Because the Court of Appeals dealt only with the general question whether any interest was allowable after March 2, 1919, its opinion does not directly present any issues with respect to the manner of the computation of such interest, if allowable. Nevertheless, such issues are presented by

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of applying the amounts of those awards, so far as was necessary, to the discharge of its interest-bearing obligations which were reflected in the amounts awarded, the relator used the money for various other purposes, and permitted its interest-bearing obligations to remain outstanding and unpaid."

the pleadings, and we have felt constrained to set forth at some length our views with respect to the principles which should govern such issues. Because of the tortuous and prolonged legal proceedings which in the past have attended relator's claim, we think it would be most unfortunate if, after the decision of this Court in the instant proceeding, still other legal proceedings would be necessary before relator's claim might finally be settled.

CONCLUSION

The judgment of the Court of Appeals should be reversed.

Respectfully submitted.

THOMAS D. THACHER,
Solicitor General.
SETH W. RICHARDSON,
Assistant Attorney General.
PAUL D. MILLER,
Attorney.

APRIL 1933.

APPENDIX A

STATUTES INVOLVED

Extract from the Act of March 2, 1919, known as the War Minerals Relief Act, c. 94, 40 Stat. 1272, 1274:

> SEC. 5. That the Secretary of the Interior be, and he hereby is, authorized to adjust, liquidate, and pay such net losses as have been suffered by any person, firm, or corporation, by reason of producing or preparing to produce, either manganese, chrome, pyrites, or tungsten in compliance with the request or demand of the Department of the Interior, the War Industries Board, the War Trade Board, the Shipping Board, or the Emergency Fleet Corporation to supply the urgent needs of the Nation in the prosecution of the war; said minerals being enumerated in the Act of Congress approved October fifth, nineteen hundred and eighteen, entitled "An Act to provide further for the national security and defense by encouraging the production, conserving the supply, and controlling the distribution of those ores, metals, and minerals which have formerly been largely imported, or of which there is or may be an inadequate supply."
>
> The said Secretary shall make such adjustments and payments in each case as he shall determine to be just and equitable; that the decision of said Secretary shall be conclusive and final, subject to the limitation hereinafter provided; that all pay-

ments and expenses incurred by said Secretary, including personal services, traveling and subsistence expenses, supplies, postage, printing, and all other expenses incident to the proper prosecution of this work, both in the District of Columbia and elsewhere, as the Secretary of the Interior may deem essential and proper, shall be paid from the funds appropriated by the said Act of October fifth, nineteen hundred and eighteen, and that said funds and appropriations shall continue to be available for said purpose until such time as the said Secretary shall have fully exercised the authority herein granted and performed and completed the duties hereby provided and imposed: *Provided, however,* That the payments and disbursements made under the provisions of this section for and in connection with the payments and settlements of the claims herein described, and the said expenses of administration shall in no event exceed the sum of $8,500,000: *And provided further,* That said Secretary shall consider, approve, and dispose of only such claims as shall be made hereunder and filed with the Department of the Interior within three months from and after the approval of this Act: *And provided further,* That no claim shall be allowed or paid by said Secretary unless it shall appear to the satisfaction of the said Secretary that the expenditures so made or obligations so incurred by the claimant were made in good faith for or upon property which contained either manganese, chrome, pyrites, or tungsten in sufficient quantities to be of commercial importance: *And provided further,* That no claims shall be paid unless it shall appear to the satisfaction of said Secretary that

moneys were invested or obligations were incurred subsequent to April sixth, nineteen hundred and seventeen, and prior to November twelfth, nineteen hundred and eighteen, in a legitimate attempt to produce either manganese, chrome, pyrites, or tungsten for the needs of the Nation for the prosecution of the war, and that no profits of any kind shall be included in the allowance of any of said claims, and that no investment for merely speculative purposes shall be recognized in any manner by said Secretary: *And provided further,* That the settlement of any claim arising under the provisions of this section shall not bar the United States Government, through any of its duly authorized agencies, or any committee of Congress hereafter duly appointed, from the right of review of such settlement, nor the right to recover any money paid by the Government to any party under and by virtue of the provisions of this section, if the Government has been defrauded, and the right of recovery in all such cases shall extend to the executors, administrators, heirs, and assigns of any party.

That a report of all operations under this section, including receipts and disbursements, shall be made to Congress on or before the first Monday in December of each year.

That nothing in this section shall be construed to confer jurisdiction upon any court to entertain a suit against the United States: *Provided further,* That in determining the net losses of any claimant the Secretary of the Interior shall, among other things, take into consideration and charge to the claimant the then market value of any ores or minerals on hand belonging to the claimant, and

also the salvage or usable value of any machinery or other appliances which may be claimed was purchased to equip said mine for the purpose of complying with the request or demand of the agencies of the Government above mentioned in the manner aforesaid.

Act of November 23, 1921, c. 137, 42 Stat. 322:

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That section 5 of the Act approved March 2, 1919, entitled "An act to provide relief in cases of contracts connected with the prosecution of the war, and for other purposes," be, and the same is hereby, amended as follows:

Add to the first paragraph of section 5 the following proviso: '*Provided,* That all claimants who, in response to any personal, written, or published request, demand, solicitation, or appeal from any of the Government agencies mentioned in said Act, in good faith expended money in producing or preparing to produce any of the ores or minerals named therein and have heretofore mailed or filed their claims or notice in writing thereof within the time and in the manner prescribed by said Act, if the proof in support of said claims clearly shows them to be based upon action taken in response to such request, demand, solicitation or appeal, shall be reimbursed such net losses as they may have incurred and are in justice and equity entitled to from the appropriation in said Act.

"If in claims passed upon under said Act awards have been denied or made on rulings contrary to the provisions of this amendment, or through miscalculation, the Secre-

tary of the Interior may award proper amounts or additional amounts."

Act of February 13, 1929, c. 182, 45 Stat. 1166:

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That any claimant who has heretofore filed with the Secretary of the Interior within the time and manner provided by existing law a claim under said Acts generally known as the War Minerals Acts (Fortieth Statutes, page 1272, and its amendments) may within one year from the date of the passage and approval hereof petition the Supreme Court of the District of Columbia to review the final decision of the Secretary of the Interior upon any question of law which has arisen or which may hereafter arise in the adjustment, liquidation, and payment of his claim under said Acts, but the decision of the Secretary of the Interior on all questions of fact shall be conclusive and not subject to review by any court.

SEC. 2. In any proceeding brought under the provisions of section 1 of this Act the Secretary of the Interior shall be designated as the defendant or respondent, and upon the filing of the petition the cause shall follow the usual procedure, subject to such rules or orders as the court may make with respect thereto.

SEC. 3. Jurisdiction is hereby conferred upon the Supreme Court of the District of Columbia, as a district court of the United States, to hear and determine all such suits and enter all orders, judgments, and decrees therein, subject to the usual right of appeal by either party to the Court of Appeals of the District of Columbia, whose final judg-

ment may be reviewed by the Supreme Court of the United States by petition for certiorari or by appeal as provided by law and the rules of the court.

SEC. 4. Upon the final disposition of such proceeding, the clerk of the Supreme Court of the District of Columbia shall without delay certify to the Secretary of the Interior the final judgment or decree rendered therein, whereupon the Secretary of the Interior shall proceed with the final adjustment of said claim in accordance with the law as construed by the court in such judgment or decree.

APPENDIX B

DEPARTMENT OF THE INTERIOR,
OFFICE OF THE SECRETARY,
Washington, March 14, 1932.

Reconsidered under decree of the Supreme Court of the District of Columbia

Claim No. 1
War Minerals Relief Act

In re The Chestatee Pyrites & Chemical Co.

This claim is reconsidered only as to interest on borrowed capital pursuant to a writ of mandamus issued by the Supreme Court of the District of Columbia. There are other items in dispute, namely, amount to be allowed on prestimulated plant, purchase of real property, taxes, legal services, and salaries to officers, but all these appear in a suit pending in the court, and their consideration awaits final determination of the litigation. In explanation of the filing of two suits in the

claim it may be said that counsel agreed to a division of items so that a test case as to interest might be carried forward to the Supreme Court of the United States. This claim, therefore, is the one upon which the decision of the highest court as to interest was based.

When the writ of mandamus and the late questionnaire were received by the Commission it was found that the claimant had computed interest not to March 2, 1919, but to December 31, 1931. The interpretation given to the language of the court by the claimant added more than half a million dollars to the amount that was to be considered under the Commission's view of the court decision, and it was decided to ask the Solicitor for an opinion on the legal question involved. The Solicitor held that all interest stopped at March 2, 1919. The Secretary then requested the opinion of the Attorney General on the legal question involved, and that officer still has the matter under consideration.

While awaiting the opinion of the Attorney General, Mr. Geo. A. Pratt, of the claimant company, and Mr. Lee Ashcraft, of Ashcraft-Wilkinson, the latter being the chief creditor of the claimant company, made request that the Secretary award at once, without prejudice, the amount of interest found to be reimbursable to March 2, 1919. They represented that such an award would be of very great assistance in meeting their pressing financial obligations, and they further represented that the award would be applied on the principal, and, therefore, would be a stop on interest to the extent of the award in case it should be held finally

that interest was payable to the date of settlement of the claim.

The Secretary, after considering all phases of the situation, decided that compliance with the request would be the advantage of all concerned and it was ordered that interest be computed to March 2, 1919, having regard to all the provisions and limitations of the act as amended:

Two awards have been made

This claim was the first to be filed under the War Minerals Act, and the amount claimed was $914,172.73. A part of the alleged loss was interest on borrowed capital and accounts, amounting to $40,795.13. Stimulation as of June 18, 1917, was conceded, the commercial importance of the property and other requirements were held to be met, and an award of $223,529.17 was made. Later, after claimant had filed objections to certain disallowances in the award, the claim was reaudited, the auditors for the Government and the principals for the claimants agreeing upon the amount of the expenditures prior to, during, and subsequent to the date of stimulation. As recast, the figures were as follows:

Expenditures prior to stimulation (June 18, 1917)	$149,040.38
Net amount after income deducted	702,713.27
Errors and post-stimulation expense	58,172.04
	909,925.69

The interest item as agreed upon remained at $40,795.13, to November 12, 1918.

In September, 1922, after the filing of many briefs and after hearings, the Secretary made a second award of $469,784.62. In all these considerations and reconsiderations the claim for interest was dis-

allowed, and, progressively, as time passed the claimant contended for additional interest which, it was claimed, was running on the unpaid principal.

The claim as now presented

In the late questionnaire, executed on January 2, 1932, the claimant asks repayment of alleged net losses totaling $666,059.24. This amount includes the items still in litigation in the pending suit already referred to, but, deducting them from the total, the amount of the interest now claimed is $568,727.88. In computing this interest the claimant charged interest at 6 per cent for the first five years, which was the duration of a financing contract, and 8 per cent thereafter on the new promissory notes which were given in the refinancing of the debt. The interest so charged was largely interest on a loan of $695,000 made by Ashcraft-Wilkinson Company, but $50,000 of the amount was loaned prior to stimulation.

In explanation of the fact that only a small part of the $693,313.79, which in the two awards has been paid to claimant, was applied to the reduction of the principal, a distribution of the awards was presented with the questionnaire. The claimant states that, of the first award of $223,529.17, miscellaneous disbursements to Chestatee creditors was made by Ashcraft-Wilkinson in the amount of $182,260.05; that $15,017 was paid for legal services, and $26,252.12 was paid to Geo. L. Pratt for salary, travel, and expenses. Whether Ashcraft-Wilkinson paid the money to themselves as creditors, or to other creditors, is not clear. No part of the first award appears to have been applied on the princi-

pal debt to Ashcraft-Wilkinson, although some of it may have been applied on interest.

Of the second award of $469,784.62, there was paid to Ashcraft-Wilkinson $190,526.63 to apply on the principal, $64,500 as a financing commission, $6,541.78 as a brokerage fee, and $106,149.61 for interest. Of the remainder, $85,165.53 was paid for legal services and $16,901.07 for travel and miscellaneous expenses.

A further statement by the claimant is to the effect that, to date, legal services have cost $144,430.90; expert witnesses, travel, and incidentals, $46,543.71; and general auditing, approximately $32,996.04; a total of $223,970.65.

From the foregoing it appears that of the total of $693,313.79 that has been awarded and paid to the claimant, $190,526.63 has been applied to reduce the principal debt to Ashcraft-Wilkinson, although much more than this has gone to this firm in the way of commissions, fees, and interest.

Interest repayable as of March 2, 1919

Auditors for the Government have in the past month investigated interest payments and interest obligations of this company as well as its strictly operating expenditures. They have prepared a comprehensive report covering the history of operations before, during, and, to an extent, subsequent to stimulation, and this report is made a part of the record in the claim. As to interest, they have traced payments to Ashcraft-Wilkinson and to banks, payments on notes for machinery and on notes for accounts payable. Excluding interest on $50,000 borrowed prior to stimulation, they find that there is due for reimbursement to this claimant

company from the date of stimulation up to and including March 2, 1919, the sum of $44,451.45.

In the above claim, under the War Minerals Relief Act, section 5 of the act of March 2, 1919 (40 Stat. 1274), as amended, upon due consideration of the record, the admissible net loss on interest to March 2, 1919, is found to be $44,451.45.

An award is made in this claim in the sum of $44,451.45.

(Sgd.) RAY LYMAN WILBUR,
Secretary.

JB/or.

APPENDIX C

THE SECRETARY OF THE INTERIOR,
Washington, February 23, 1933.

Chestatee Pyrites & Chemical Corp. (War Minerals Claim No. 1):

In awards heretofore made in this case, certain items included in the claim were disallowed upon the belief that under the applicable law they could not be included or paid. They involved items set up by the Government auditor as a result of his examination of claimants' acts and expenditures, and totalled $149,040.38. A part of this amount was credited to claimant company for materials used in the stimulated operations during the war, and another credit was allowed in the form of rentals for equipment ordered prior to stimulation but utilized in the stimulated operations.

Certain legal questions arose and were carried into the courts for determination under the provisions of the act of 1929, resulting in a decision by the Supreme Court of the United States and a

mandate to the Secretary of the Interior to proceed without delay to a final adjustment of the disputed items in the claim to determine whether any of the items were in fact losses suffered by the claimant and its stockholders by reason of producing or preparing to produce pyrites in compliance with any request or demand and if so, "to determine what allowance therefor shall be just and equitable and to include such allowance, if any, in the final adjustment of said claim."

The entire record has been reviewed and careful consideration given to the claim as now presented and in the light of the conclusion finally reached by the court. This consideration has resulted in the conclusion that a fair, just and equitable settlement will be reached by the allowance to the claimant of the sum of $90,500.00 in full and final settlement of all claims in or arising out of said war minerals claim No. 1, up to March 2, 1919.

Accordingly, I hereby award to the claimant the said sum of $90,500.00, in full, final and equitable adjustment of all claims or demands arising out of or pertaining to said War Minerals Relief Claim No. 1, up to March 2, 1919.

RAY LYMAN WILBUR,
Secretary.

WASHINGTON, D.C., *February 23, 1933.*

Hon. RAY LYMAN WILBUR,
Secretary of the Interior,
Department of the Interior,
Washington, D.C.

DEAR SIR: I am in receipt of your additional award, dated February 23, 1933, to The Chestatee Pyrites and Chemical Corporation, Claim No. 1,

on the War Minerals Relief Commission docket, in the sum of Ninety Thousand Five Hundred Dollars ($90,500.00).

The Chestatee Pyrites and Chemical Corporation hereby accepts this award as payment of its losses in full up to March 2, 1919, as stated in the award.

I would appreciate your prompt certification for payment.

Very truly yours,

THE CHESTATEE PYRITES AND CHEMICAL CORPORATION,

By GEO. L. PRATT,

Vice President and Treasurer.

GLP/or

U. S. GOVERNMENT PRINTING OFFICE: 1[illegible]